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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re I.C., a Person Coming Under the
Juvenile Court Law.

B217758
(Los Angeles County
Super. Ct. No. CK74162)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

L.C.,

Objector and Appellant.

APPEAL from a finding and orders of the Superior Court of Los Angeles County,
Stanley Genser, Commissioner (pursuant to Cal. Const., art. VI, § 21). Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Objector and
Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County
Counsel, Sarah Vesecky, Deputy County Counsel for Petitioner and Respondent.

INTRODUCTION

L.C., father of 10 year old Ian, nine year old Elizabeth, and one year old Yvonne, appeals from the juvenile court's jurisdictional finding and dispositional orders awarding physical and legal custody of the children to their mother, E. Father contends there was insufficient evidence to support the juvenile court's finding and orders. We hold that the juvenile court's jurisdictional finding is supported by substantial evidence and that the juvenile court did not abuse its discretion in awarding mother sole legal and physical custody of the children.

BACKGROUND

The case came to the attention of the Department of Children and Family Services (Department) after a referral was made alleging that Ian and Elizabeth were the victims of emotional abuse by father. On August 27, 2008, the Department filed a petition under Welfare and Institutions Code section 300, subdivision (b)¹ alleging that father "has mental and emotional problems including Bipolar Disorder, delusions, depression and suicidal ideation which renders the father incapable of providing the children with regular care and supervision. On prior occasions, the father was hospitalized for the evaluation and treatment of the father's psychiatric condition. The father has failed to take the father's psychotropic medication as prescribed. The father's mental and emotional problems endanger the children's physical and emotional health and safety, placing the children at risk of physical and emotional harm, damage and danger."²

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

² The petition was filed with respect to Ian and Elizabeth. Yvonne was born during the pendency of the petition. On January 27, 2009, the Department filed a section 300 petition on Yvonne's behalf with allegations substantively similar to the petition filed on her siblings behalf. Yvonne was detained and released to mother, and the juvenile court consolidated the two matters.

The Department's August 27, 2008, Detention Reports states that mother claimed that father has a bipolar disorder but refused to take his medication. As a result, father's behavior had become progressively more erratic, irrational, and hostile. According to mother, father had a long history of psychiatric disorders and was currently being treated by a psychiatrist, but refused to take the psychotropic medication prescribed for him.

According to mother, on August 18, 2008, father claimed that mother was molesting Elizabeth. Father claimed that he had observed mother washing Elizabeth's "private parts" in a suspicious manner that "very clearly indicated" to him that mother was molesting the child. The accusations continued the next day, with father making the accusations in front of the children. On August 20, 2008, father telephoned mother at work to inform her that he had taken Elizabeth to USC County Hospital to be evaluated for sexual abuse. The findings were negative. Father then took Elizabeth to her pediatrician for a second opinion that also was negative. Mother told father that his accusations and actions were outrageous and that their marriage was no longer "tenable." Father responded that if mother tried to take the children, he would kill himself in their presence.

The Detention Report states that Elizabeth said that she "got along fine" with father. Elizabeth denied that mother had sexually molested her and stated that it was "'no big deal about going to the hospital' to be examined." Elizabeth denied ever hearing father threaten to harm himself. Elizabeth stated that she did not like that her parents were "always fighting." According to the report, Ian stated that he loved both of his parents. Ian had "no problem" being with father most of the day while mother worked. Ian denied ever hearing that father threatened to harm himself.

The Detention Report states that father said he was "monitoring" mother because he suspected that she was sexually penetrating Elizabeth. Father's suspicion was based on his observation of mother cleaning Elizabeth in a manner that he believed was "totally inappropriate." Father stated that his concern about sexual abuse or incest derived from his having been sexually molested by his father, a brother, and an uncle. Father denied having threatened to commit suicide in front of the children, but admitted threatening

suicide about seven years prior when mother had threatened to leave him with the children.

Father stated that he was presently being treated by Dr. Robert Krasnow for depression. According to father, Dr. Krasnow supported his wish not to take medication for depression. According to the social worker, when he spoke with Dr. Krasnow, Dr. Krasnow stated that “he had always strongly recommended psychotropic medication for father’s psychiatric disorder, but that father had refused to comply with the plan.” Upon learning of the social worker’s statement in the report, Dr. Krasnow wrote a letter denying that he told the social worker that father had a “major mental illness diagnosis (i.e., Bipolar) and needed to be on medication.” According to Dr. Krasnow, he told the social worker that he could not discuss father’s diagnosis because it would be a breach of confidentiality.

During the social worker’s interview with father, father became increasingly agitated and angry. Father accused the social worker of being on mother’s side. Father stated that the social worker intended to take the children from father’s custody and declared that no one was going to take his children from him. Father’s agitation and anger reached a level that caused the social worker to fear for his safety, and he called the police to act as “keepers of the peace.” Father agreed to leave the family home and not return or contact the children without Department approval.

According to the Detention Report, the family had had prior involvement with the Department. In June 2001, the police were called after a verbal altercation between mother and father and father threatened to kill himself if mother left him. Allegations of emotional abuse of the children were “substantiated.” The case was closed with mother and father seeking counseling and father being prescribed medication for depression. In November 2002, an allegation that father emotionally abused the children was “substantiated but the situation was stabilized.” An October 2004, allegation that father physically abused Ian by spanking him with a belt and with his open hand was found to be inconclusive.

In an August 25, 2008, declaration submitted in connection with a request for a protective order, mother stated that father had psychologically abused her and exhibited “extremely unstable behavior” over the course of their marriage. According to mother, father’s behavior stabilized when father took medication for depression. However, whenever father took medication following an incident, he eventually stopped taking it.

In a letter dated August 26, 2008, Dr. Krasnow wrote that he had seen father eight to 10 times and that father had sought treatment because he was having marital problems with mother. Dr. Krasnow reported that father denied that father had been diagnosed with psychosis or depression and that he – Dr. Krasnow – agreed with those conclusions. Dr. Krasnow stated that his “working diagnoses” for father were “partner relational disorder” and “occupational problem.” Although Dr. Krasnow would describe father as a “‘warm head,’” he believed that father was “all ‘bark’ and little ‘bite’.”

The juvenile court found a prima facie case for detaining the children. The children were released to mother. Mother was granted exclusive use of the family home, and father was ordered to move out within 48 hours. Father was granted monitored visitation twice a week.

The Department’s September 15, 2008, Jurisdiction/Disposition Report states that father and mother met on a street corner in November 1996 and married three days later. Father admitted that in 1982, while serving in the Air Force, he was hospitalized for 33 days after his sergeant found him crying in his dorm. Father explained that he had driven from Illinois to South Dakota to clean a rental property his tenant had “trashed” and that on the long drive back he was exhausted and listening to Journey whose “intense lyrics” caused him to become upset. Father was diagnosed as having a “behavioral disorder with homosexual tendencies.”

In an interview with father set forth in the report, father stated that he went to the hospital in 2004 and again in 2005, after marital discord with mother, and tried to “pull the suicidal thing.” Father was not believed either time. Father admitted that he had

received counseling at the Veterans Administration and had been prescribed Zoloft,³ but that it had been years since he had been in counseling there. In 2005, father received counseling at the Southern California Counseling Center.

In the interview, father denied accusing mother of sexual abuse. Instead, father accused mother of child abuse. Father explained that on the day in question, “they”—apparently the family—had been at a pool and had a long day. Apparently mother woke Elizabeth at 11:30 p.m. to clean her. Father believed that such action “tormented” Elizabeth.

Father stated that mother had obtained four or five restraining orders against him. Mother previously had had a neighbor serve him with divorce papers.

Father’s mother was interviewed for the Jurisdiction/Disposition Report. Paternal grandmother stated that father did not have any “mental problems.” According to paternal grandmother, father and mother had been verbally abusive to each other and that father once told her that mother had “smacked” him in the face, and he “smacked” mother back. Paternal grandmother said that mother was a good person and not abusive towards the children.

In notes dated December 9, 2008, father’s therapist Carolyn Taylor wrote that father was upset about his apparently failed marriage. The therapist wrote that she had “not seen signs of a bigger or broader mental health issue than this.”

The Department’s notes concerning father’s monitored visits for the period from September 8, 2008, through November 24, 2008, uniformly describe positive and appropriate interaction between father and his children. The children were excited to see father and would run up to him and kiss and hug him.

The Department’s October 23, 2008, Addendum Report, states that Ian, when asked if he enjoyed doing things with mother and father responded, “My mom didn’t go. I only did things with my dad. My mom doesn’t want to (go).” Ian stated that his parents argued, but that he never saw any physical altercation.

³ Zoloft is a medication that can be used to treat anxiety or depression.

Asked to describe mother, Ian said, “She’s pregnant. She’s nice. She doesn’t really take me places. Asked what he liked best about mother, Ian said, after a long pause, “I don’t know. She’s my mom so I like her.” Asked to describe father, Ian said, “He take us places. He’s energetic. He takes us to the library.” Asked what he liked best about father, Ian said, “He takes me places and do a lot of fun things.” According to Ian, father disciplined the children by giving them timeouts or spanking them. Mother pinched the child and had twice slapped Ian on his cheek.

Ian and Elizabeth said that they wanted to live with both parents, but if their parents were not together, they wanted to split time between them. Mother told Ian that the social workers were involved with his family because father had a mental illness. Ian did not understand what mother meant, and did not believe that father acted “different or inappropriate.” Elizabeth did not know why father was no longer living with the family. Elizabeth did not feel uncomfortable or abused when mother washed her “private area.”

The Addendum Report stated that the Department had not been able to determine the status of father’s mental health due to a lack of consistent and reliable information. However, the reports states, “[i]t is clear by his actions (as described in the Detention Hearing and PRC reports), previous substantiated emotional abuse allegations against [him] in 2001 and 2002, his current fragile emotional status (as evidenced in his written letter attached to the PRC report) and his criminal record (one previous arrest for spousal abuse and felony convictions for robbery and burglary) that the children would be at risk for further emotional abuse if returned to the father’s care.”

The Department’s December 2, 2008, Addendum Report addressed a report that mother had physically abused Ian and Elizabeth. The report states that, since the family had come before the juvenile court, it had received two hotline referrals alleging that mother had physically abused Ian. The allegations apparently had been made by father after he had spoken with Ian in unmonitored telephone conversations. The report also addressed father’s mental health issues. The report states that in November 2002, the Department received a referral alleging that Ian and Elizabeth were victims of physical and emotional abuse by their parents. At that time, mother reported domestic violence by

father in the children's presence. Father had informed the social worker that he had been in therapy for anger management on and off for almost four year and that he was taking psychotropic medications. Father was then taking Citalopram and Diphenhydramine prescribed by a doctor at the Veterans' Administration emergency room.

The report recommended that the juvenile court terminate jurisdiction over Ian and Elizabeth with a family law order in place. The report recommended that mother be awarded sole legal and physical custody and that father have reasonable monitored visits with the children. The report further recommended that father receive a psychological evaluation and individual counseling to address domestic violence, anger management, depressions and other case related issues.

At the contested adjudication hearing, dependency investigator Jaime Hein testified that the juvenile court should find that father suffers from delusions because father believed that mother molested Elizabeth, and father said he had taken Elizabeth to the doctor to have her examined, but there was no evidence to support father's belief or to show that he took Elizabeth to the hospital. Hein's belief that father was delusional was based on what was written in the Detention Report.

Dr. Krasnow testified that he diagnosed father with a relationship disorder – marital problems – and a work-related disorder. When the juvenile court asked Dr. Krasnow if "that" was considered a psychiatric disorder, Dr. Krasnow stated, "It is. I mean, it's diagnosable and billable." Dr. Krasnow stated that he had treated father for about one year. The primary issue father was seeing Dr. Krasnow for was chronic marital problems.

Social worker Larry Ascherman, who prepared the Detention Report testified that he paraphrased Dr. Krasnow when he wrote in the Detention Report that Dr. Krasnow said that he strongly recommended that father take psychotropic medication. Dr. Krasnow actually said, "I've been, you know, wanting him to take the psychotropic medication but he doesn't." The juvenile court suggested that Ascherman's testimony sounded much more reasonable and that Ascherman should have quoted Dr. Krasnow.

Ascherman agreed. Ascherman testified that Dr. Krasnow refused to divulge a specific diagnosis for father.

During a break in Ascherman's testimony, the juvenile court stated it had drawn some "very strong preliminary conclusions" based on its rereading of the Department's Jurisdiction/Disposition Report and October 23, 2008, and December 2, 2008, Addendum Reports in light of the testimony to that point. The juvenile court stated that it found the Departments reports to be "very superficial, conclusionary, and less than fair, impartial, and less than bias but, clearly leaning toward the side of the mother. [¶] It's clear from the get-go that the workers were put off by the father's demeanor and approach and his, perhaps, bizarre actions and certain red flags were raised, but there's been no pursuit of the information or evidence regarding the red flags" As an example, the juvenile court stated that there was a dispute about why father had taken Elizabeth to the hospital, but there was no dispute that he actually did take her—Elizabeth herself discussed her hospital visit. Yet, the juvenile court observed, the Department had inferred that father was delusional based on his claim to have taken Elizabeth to the hospital.

The juvenile court observed that "everything" is based on mother's statements and negative inferences drawn by the Department. The juvenile court stated that "[t]here's been no evidence, no evidence presented that the father has ever abused or neglected the children or treated them inappropriately." The court continued, "clearly, the evidence so far suggest that he's never been inappropriate with his children. They enjoy his company. They want to be with him as much as they want to be with the mother." Apparently addressing the Department's attorney on whether she intended to call Ian and Elizabeth, the juvenile court stated, "I don't know why you would want to take the testimony of the kids. They have not said one thing that's detrimental to the father."

When the adjudication hearing resumed, mother testified that in 2000, she had read in father's Veteran's Administration records that stated that father was bipolar. Recently, mother, a nurse, had reviewed the symptoms of bipolar disorder in a book and believed that defendant acted in a manner that fit the symptoms. Mother admitted that father had never told her that he was bipolar.

Mother admitted that she had washed Elizabeth's private parts. Mother explained that it was a tradition in the Philippines that ladies wash themselves before going to bed. On the night at issue, the family had returned home late. Elizabeth went to sleep. Mother woke up Elizabeth and told her to wash herself. Elizabeth told mother that she was sleepy and asked mother to help her. Mother complied. Father accused mother of sexually abusing Elizabeth. The next morning father continued to accuse mother and would not leave her alone with the children.

Mother testified that father frequently threatened to kill himself. On August 10, 2008, after mother told father that she was separating from him, father called mother at work and told her that he would kill himself in front of the children before anybody would take the children away from him. Mother believed the children were in the car with father when he made that threat. Mother testified that father had physically abused her in 2002 and 2003.

Father testified that he was "a little concerned" that mother's conduct in washing Elizabeth was sexual abuse. Father explained that mother had washed Elizabeth at 11:30 p.m. when Elizabeth had gotten out of a pool four hours earlier and showered. Elizabeth had been sound asleep and was "hysterical" when mother woke her. Father told mother that Elizabeth, who was seven years old, was old enough to take care of such matters herself. Father told mother that Elizabeth did not need to be awakened to be washed and that it was "abusive behavior" to do so. Father believed that a seven-year-old could have waited until morning to wash without adverse health consequences.

Father testified that he took Elizabeth to County USC hospital, but that she was not examined there. Father next took Elizabeth to her pediatrician. Father spoke with a female doctor at the pediatrician's office and told her that he was concerned about mother monitoring Elizabeth's washing. When the doctor apparently met with Elizabeth, father was not present. The doctor may or may not have told father that Elizabeth was fine.

The juvenile court asked father if he had the "mindset" that mother might be sexually abusing Elizabeth. Father responded, "My wife would never sexually abuse our children. Never. I did have a ventful (sic) attitude, as in my accusation, about her

coming home pregnant. Wouldn't talk to your neighbor's cat the way I talked to her. It's a wonder you come home pregnant at 3:00 in the morning. I wouldn't tell a stray cat that. But my anger and my behavior is quite relevant. I mean quite obvious on the record how I have acted out in the past. To get someone's attention I did exaggerate a little bit. I don't think that it was sexual molestation. I do think that it was absolutely inappropriate. My daughter, she's getting big already and it's inappropriate."

Father admitted that he told mother in 1999 that he would kill himself if she left him. On several occasions, father went to the Veterans' Administration and stated that he did not feel much like living. On one occasion at the Veterans' Administration, father said he was going to kill himself, but he only said that because that was the only way to get a bed.

Father testified that he had been prescribed psychotropic medications on three occasions, the first being in 2004. The prescribing doctor told father that the medication was not for a mental illness, but to help him through some troubled times.

Father testified that he had been abusive towards mother because he idealized his marriage and had been angry with mother for ignoring him and otherwise mistreating him. Father testified that he had not been angry since August, that he had been sad to the end of October, and that he presently felt fine. Father was taking Zoloft twice a day.

Dr. Krasnow resumed the stand and testified that he did not believe that father met all the criteria for a diagnosis of a borderline personality disorder. Dr. Krasnow further testified that he did not believe that father was schizophrenic or bipolar.

Ian testified that his parents fought a lot. They screamed and yelled at each other. Ian could hear what sounded like slapping and hitting. Mother and father fought behind closed doors. Ian never saw mother or father hit the other. After mother and father fought, Ian saw red marks or bruises on both parents that indicated they had been hit.

Ian testified that on one occasion he did not get on the school bus because he felt sick. Ian vomited and walked back home with his babysitter. When Ian returned home, he explained to mother that he did not feel well and that he had vomited. Mother was angry with Ian and yelled at him. Mother cried because she wanted him to be at school.

Mother told Ian to pack his bags, that she was going to call the social worker. Ian began to cry and packed his bags. Ian asked mother if she could forgive him for not going to school. Ian then helped mother pack other things because exterminators were coming to the house.

Ian testified that two weeks before his testimony, mother told him that she was not going to let father see Yvonne. Ian never heard father say he was going to kill himself.

At the conclusion of the adjudication hearing on February 5, 2009, the juvenile court sustained an amended section 300 petition that alleged that mother and father “have severe marital problems and conflicts, exacerbated by emotional and/or mental health problems exhibited by father, which have resulted in, among other things, allegations of domestic violence made by mother against father, and father against mother, threats of suicide made by father, and suspicions by father that mother is abusing Elizabeth. Said marital problems and conflicts endanger the children’s physical and emotional health and safety requiring Dependency Court intervention.”⁴ The juvenile court permitted father weekend, overnight, monitored visits at paternal grandmother’s house. The juvenile court ordered mother, father, Ian, and Elizabeth to undergo an evaluation pursuant to Evidence Code section 730.

Dr. Ronald Fairbanks was appointed to perform the Evidence Code section 730 psychological evaluation. In connection with his evaluation, Dr. Fairbanks reviewed father’s psychiatric records from the Veterans’ Administration hospital; the Jurisdiction/Disposition Report, the Detention Report; and the December 2, 2008, Addendum Report. Dr. Fairbanks met with father, Ian, and Elizabeth on one day, and with mother, Ian, and Elizabeth on the next day.

In the March 16, 2009, Evidence Code section 730 report, Dr. Fairbanks stated that father “clearly presents as someone with a somewhat ill defined personality disorder that’s not of major significance relative to care of children, but sometimes troublesome in

⁴ The juvenile court sustained the petition under subdivision (b) as to Ian and Elizabeth and subdivision (j) as to Yvonne.

terms of relationships. He certainly would not be an easy man to live with, which obviously seemed to be the case, but overall, he does present as having significant concern and love for his children.” Dr. Fairbanks reported that father described himself as a nurturing parent and mother, who was away from the home working “all the time,” as less nurturing. The doctor stated that father’s description was a “good description of what appears to be the case and it seems to be right-on in terms of its validity.”

Dr. Fairbanks administered the Minnesota Multiphasic Personality Inventory to father. The results indicated that father has emotional control over himself, a result that was consistent with Dr. Fairbanks’s observations of father. Dr. Fairbanks opined that father’s willingness to stay home with the children was “very positive” for them. The profile did not indicate a significant amount of aggression, a tendency to be abusive, or major emotional factors. That did not mean that father was not difficult to live with.

Dr. Fairbanks asked Ian who gave him hugs and kisses. Ian said that father did, and that he had to ask mother for hugs and kisses. Dr. Fairbanks concluded that Ian was receiving significant attention from father and needed more from mother. Ian said that both parents loved him and that he wanted more visits with father. Dr. Fairbanks concluded that Ian has a stronger attachment to father than to mother. Elizabeth told Dr. Fairbanks that she received hug and kisses from both parents. Elizabeth demonstrated a strong attachment to both parents.

Fairbanks observed mother and father interact with the children. Dr. Fairbanks stated that father was better able to control the children than mother. Describing Ian’s and Elizabeth’s interaction with father, Dr. Fairbanks wrote, “The observation of the children with their father was extremely positive. He immediately pulled them into some games, playing an intellectual game with them that he enjoyed and they clearly enjoyed very much too. . . . Generally, the observation was extremely positive and the children were extremely well behaved with the father during the observation as well as throughout the interview. They presented no behavior problems whatsoever in direct contrast to the way they behave with their mother, which was particularly negative in terms of acting out, whining and manipulating.”

Describing Ian's and Elizabeth's interaction with mother, Dr. Fairbanks wrote, "Throughout the observation, Ian was constantly teasing and pressing Elizabeth. The mother was pleading with them to behave better but they did not, of course, because she was pleading with them and not telling them they must behave. The children were constantly pulling and pushing each other and whining for various things they wanted, trying to manipulate the mother and it appeared they were being effective with her trying to appease them rather than trying to correct their behavior."

Dr. Fairbanks stated that he did not find anything that would suggest that either parent was capable of physically or emotionally abusing Ian or Elizabeth. Based on the results of his psychological testing of father and mother, Dr. Fairbanks concluded that neither parent had any significant problems. Dr. Fairbanks noted that father's Veterans' Administration records did not provide a specific diagnosis, although the records indicated that father might need to take antidepressants. Dr. Fairbanks stated that father did not have "significant emotional factors that are treatable," but father is "clearly a difficult person to live with and can be very irritating at times." According to Dr. Fairbanks, father had no "significant treatment issues," but would benefit from taking Zoloft.

Dr. Fairbanks expressed reluctance to make a "solid recommendation" regarding placement of the children. Father appeared to have a better relationship with the children than mother, but that likely was because he had spent more time with them when he stayed home from work to care for them. Father did not appear to have "emotional factors" that would prevent him from caring for the children. Dr. Fairbanks stated he had found "nothing negative" that would suggest that the juvenile court should not place the children with father.

Dr. Fairbanks stated that he did not see the need to monitor visitation with father, although father should stay away from mother. Dr. Fairbanks stated that the parents' relationship seemed "somewhat negative" and thus not healthy for the children to see them together. Dr. Fairbanks stated that although he was "positive" about the children being with father, father is "irritating and rigid at times and very difficult to deal with, so

as a result, it's understandable the mother cannot have a positive relationship with him.” Dr. Fairbanks stated that father needs to be in therapy, noting, however, that father tends to have “characterological” issues rather than the type of issue that are amenable to treatment. Mother did not appear to have any therapy issues.

On April 8, 2009, the juvenile court granted father unmonitored visits, including weekends. The Department's April 21, 2009, Interim Review Report states that on March 31, 2009, Ian cried and stated to the social worker that he did not want to visit father during his vacation and preferred to stay home with mother. Mother told Ian that the visit would only be for three days and that it was important that he visit father. Mother told the social worker that Ian called her every day during the visit crying and asking if he could come home. Elizabeth also cried and stated that she did not want to be there and wanted to come home.

On May 1, 2009, the juvenile court granted father overnight, weekend visits on alternate weekends, starting May 9, 2009. The juvenile court ordered the Department to prepare and submit by June 17, 2009, a report regarding how father's visitation was proceeding. The juvenile court ordered mother and father to participate in conjoint counseling with the children and parenting classes.

The Department's June 17, 2009, Addendum Report states that the children, especially Ian, did not want to go to Palm Desert to visit father as often as they had been. Ian was reported to have stated that he did not want to visit father in Palm Desert. Ian stated that father cursed at them when they visited him. Ian stated that he did not mind visiting father for a few hours in Los Angeles, but did not want to spend the night. Elizabeth also expressed a preference for visiting father in Los Angeles and not in Palm Desert. The Addendum Report states that Elizabeth continued to perform well in school despite her parents' pending divorce and ongoing court battle. Ian continued to perform in school at the same level all year despite his family's difficulties. He does not do as well as Elizabeth.

The Addendum Report states that father continued to be difficult to work with. Father reportedly would get “very upset” when the social worker called him during work

hours. Father reportedly had not followed through on attending conjoint counseling with his children and had not completed a parenting class. The report states that mother had not enrolled in a parenting class. Mother had had a difficult time finding a parenting class due to her demanding work schedule and because she was caring for three children.

The Addendum Report recommended that jurisdiction be terminated with a family law order in place. The report recommended that mother be awarded sole legal and physical custody of the children and that father had “reasonable” unmonitored visits with the children. The report further recommended that the family law order stipulate that father was to attend counseling with a licensed therapist to address anger management, domestic violence, anxiety and depression, parenting and coping skills.

On July 1, 2009, mother submitted a declaration requesting sole physical custody and joint legal custody of the children. Mother sought sole physical custody because the distance between her and father’s respective homes was 100 miles, making joint physical custody impractical. Mother proposed that father have visitation with the children from 7:00 p.m. on Friday to 5:00 p.m. on Sunday on the first and third weekends of the month. Mother supported more frequent visitation if father moved back to the Los Angeles area. Mother stated that she and father should have joint legal custody because “[t]he father and I have always been involved with our children’s affairs. I want us to both participate in any decision-making concerning our children’s medical or educational needs.”

On July 1, 2009, father submitted a declaration stating that he believed it was in the children’s best interest to be placed in his custody because the time he spent with the children was more beneficial to their emotional, physical, and mental well-being than the time they spent with their mother. Father’s declaration detailed his planned activities for the children, where they would attend school, and the advantages he could provide them based on his work schedule as opposed to mother’s work schedule.

At the July 1, 2009, disposition hearing, the children’s attorney argued that it was in the children’s best interest that the parents have joint legal custody and mother have sole physical custody. The children’s attorney stated that if father lived closer, they would have wanted joint physical custody, but because father moved out of the

community and away from the children's friends and because of the hot weather in father's community, they requested that mother have sole physical custody with father having visitation rights. The children's attorney believed the children's request was appropriate.

Father's attorney argued that the children's stated preference should not control the juvenile court's decision – eight and nine year olds should not be allowed to decide where they wanted to live. Father had been the children's primary caretaker and was the parent with whom the children had their primary attachment. Father's attorney noted that because the children currently had a one hour bus ride to school, they were not living in a neighborhood where they went to school and came home and played with their friends. The children had a "bifurcated existence" between their friends at school and their friends at home. If the children were placed in father's custody, they would develop a routine and make friends with the children they went to school with who would be their neighbors. Father's attorney stated that if the juvenile court placed the children with mother, father would not participate in a court-scheduled mediation for a custody agreement for a family law order because father would not agree with the placement.⁵

Mother's attorney argued that it was not in the children's best interest to uproot them from the home in which they had lived the majority of their lives. Mother's attorney argued that the children should not be removed from their school where they participated in a gifted program and were performing well. Mother's attorney argued that the children should reside primarily with mother with father having joint legal custody and unmonitored visits including overnight weekend visits.

The Department's attorney argued that mother should have sole legal and physical custody. The attorney acknowledged that mother and father had been "working together within the last couple of months," but argued that the trial demonstrated that the parents had not been able to work together in the past. The Department was concerned that once

⁵ Father's attorney appears to have been mistaken when he referenced a mediation for a "custody agreement." An agreement to be mediated concerned visitation.

it was no longer involved with the family, mother and father would not be able to work together regarding legal issues for the children. The Department argued that it was in the children's best interest to remain in their present home and school.

The juvenile court stated that the issue was the best interest of the children and that either mother or father "would be probably fit to care for the children in a non-dependency situation." In deciding where the children should live, the juvenile court stated that it was a "close case." The juvenile court stated that the children should not dictate where they lived, but that the court could give some weight to their preference. The juvenile court lamented that father did not want to participate in mediation because if the court awarded mother physical custody, father could have worked out a liberal visitation plan giving him substantial contact with the children. The juvenile court stated that father's failure to agree to mediation "clearly demonstrates his ability to or his refusal to work with mother in meeting the best interest of the children.

The juvenile court declared the children dependents pursuant to subdivisions (b) and (j) of section 300, terminated jurisdiction, and awarded mother sole physical and legal custody of the children. The juvenile court found that father and mother did not have the ability to co-parent the children because there was too much conflict between them as demonstrated by father's refusal to mediate visitation and by the history of the case. The juvenile court granted father unmonitored, weekend visits with the children on alternate weekends, with pickup and delivery locations to be agreed upon by mother and father.

DISCUSSION

I. Jurisdiction

Father contends that the juvenile court's jurisdictional findings are not supported by substantial evidence. We disagree.

A. *Standard of Review*

On appeal, we review the juvenile court's finding of jurisdiction for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*Ibid.*) "The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) An appellate court does not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*Ibid.*) Instead, the reviewing court draws all reasonable inferences in support of the juvenile court's findings, considers the record most favorably to the juvenile court's order, and affirms the order if it is supported by substantial evidence even if other evidence supports a contrary conclusion. (*Ibid.*)

B. *Relevant Legal Principles*

A child will come within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness" (§ 300, subd. (b).) "The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) "Section 300, 'subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.' [Citation.] [Citation.]" (*In re David M.* (2005) 134 Cal.App.4th 822, 829.)

“The Department has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent. [Citations.]” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; *In re David M.*, *supra*, 134 Cal.App.4th at p. 830.) To find jurisdiction under section 300, the juvenile court must determine that circumstances that exist “*at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; *In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) The past infliction of harm may establish a substantial risk of harm when there is “some reason to believe the acts may continue in the future.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

“Domestic violence against a spouse is detrimental to children.” (*Guardianship of Simpson* (1998) 67 Cal.App.4th 914, 940.) Further, domestic violence in the household where the children are living creates a substantial risk the children will encounter the violence and suffer serious physical harm or illness from it. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

The sustained amended section 300 petition provides that mother and father “have severe marital problems and conflicts, exacerbated by emotional and/or mental health problems exhibited by father, which have resulted in, among other things, allegations of domestic violence made by mother against father, and father against mother, threats of suicide made by father, and suspicions by father that mother is abusing Elizabeth. Said marital problems and conflicts endanger the children’s physical and emotional health and safety requiring Dependency Court intervention.”

At the time of the jurisdictional hearing, the parents were separated and in the process of divorcing. Mother lived in Los Angeles and father lived in Palm Desert. Thus, because the parents were physically apart and in the process of becoming legally apart, it would not appear that there was a substantial risk that the children would suffer serious physical harm or illness in the future due to the parents’ “marital problems.” Nevertheless, as the juvenile court noted, mother and father have a history of separating and reconciling. Moreover, the conflict between the parents appears to have continued despite the parents’ separation – during the pendency of this case, father made two

hotline referrals alleging that mother was physically abusing Ian. Such evidence gave the juvenile court reason to believe that the marital conflict described in the amended petition would continue in the future and posed a substantial risk of serious physical harm or illness. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) Accordingly, we conclude that substantial evidence supports the jurisdiction finding.

II. Custody

Father contends that the juvenile court erred in awarding mother sole legal and physical custody of the children. The trial court acted within its discretion.

A. Standard of Review

“We review a juvenile court’s custody placement orders under the abuse of discretion standard of review; the court is given wide discretion and its determination will not be disturbed absent a manifest showing of abuse. [Citations.] ‘Broad deference must be shown to the trial judge. The reviewing court should interfere only “‘if we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.’ [Citations.]” [Citation.]’ [Citation.]” (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

B. Relevant Principles

When a juvenile court terminates jurisdiction in a dependency case, it may issue an exit order for custody and visitation. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203.) “In making ‘exit’ orders . . . it is the best interests of the child, in the context of the peculiar facts of the case before the court, which are paramount.” (*In re John W.* (1996) 41 Cal.App.4th 961, 965.)

The juvenile court awarded mother sole legal and physical custody, finding sole custody with mother to be in the children’s best interest. The juvenile court stated that the issue of custody was a “close case.” The juvenile court believed that either mother or father would probably be fit to care for the children in a non-dependency situation. In

awarding mother sole custody, the trial court noted father's refusal to mediate a visitation agreement with mother stating, "It clearly demonstrates his ability to or his refusal to work with mother in meeting the best interest of the children." The juvenile court also stated that it did not believe that father and mother had the ability to co-parent the children because there was too much conflict between the parents as demonstrated by father's refusal to mediate. The juvenile court also gave some weight to the children's desire to remain in Los Angeles with mother. The juvenile court acted within its broad discretion in awarding mother sole legal and physical custody. (*Alicia B. v. Superior Court, supra*, 116 Cal.App.4th at p. 863.) Thus, under the applicable standard of review, we affirm the jurisdiction finding and custody order.

DISPOSITION

The jurisdiction finding and jurisdiction and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.